IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	BK 16-81243
	)	
PLANET MERCHANT PROCESSING, INC.,	)	Chapter 11
	)	
	)	
Debtor.	)	

MOTION TO CONVERT TO CHAPTER 7

COMES NOW, Planet Merchant Processing, Inc., the Debtor and Debtor in possession herein (the "Debtor") respectfully moves the Court to convert this case to Chapter 7. In support of this Motion, the Debtor states as follows:

I.

INTRODUCTION

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and Order of the District Court of the District of Nebraska. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

2. This Motion is filed under 11 U.S.C. §1112(a) and (b), Fed. R. Bankr. P. 9013 and Local Rule 9013.

3. On August 17, 2016, the Debtor filed his voluntary petition for relief under chapter 11 of Title 11, United States Code. The Debtor is in possession of its property and operating its business pursuant to 11 U.S.C. §§ 1107 and 1108. This case was not converted to a case under this Chapter.

II.

REQUEST TO CONVERT TO CHAPTER 7

4. On August 17, 2016, the Debtor filed four motions to reject its executory contracts with its only four customers (TransFirst, L.L.C., First American Payments Systems, EVO Merchant Service and WorldPay) (the "Customers").

5. On August 24, 2016, the Customers filed a Joint Motion to Continue the hearing on the Debtor's Motions to Reject Executory Contracts and requested the opportunity to conduct discovery as to whether the rejection of the contracts met the business judgment test and should be granted. The Court granted this Motion to Continue and set a hearing on the Debtor's Motion to Reject Contracts for October 12, 2016.

6. In early September, 2016, all four Customers served a combined sixty-two document requests on the Debtor which requested production of information relating a wide variety of issues including the Debtor's assets, its contracts, its attempt to sell its assets or business in early 2016 and host of other issues.

7. Also, in early September, 2016, the Debtor advised counsel for the Customers that it would agree to meet with them to discuss a resolution of the disputes between the Customers and the Debtor. The Customers advised that they would not meet with the Debtor unless it withdrew its resistance to the Customers' Motions for Preliminary Injunctions. The Debtor declined to withdraw this resistance. Thereafter, on September 13, 2016, the Court sustained the Debtor's objection to the Customers' Motions for Preliminary Injunction.

8. On September 8, 2016, the Debtor extended an offer to all four Customers in which the Debtor proposed to amend its contract terms with each Customer by changing the

compensation rate as well as other terms. All Customers rejected this proposal and never provided any counter-offers.

9. On September 21, 2016, the Customers all withdrew their objections to the Debtor's Motion to Reject Executory Contracts. At about the same time, all four Customers further advised the Debtor that it did not need to respond to the aforementioned document requests.

10. On October 6, 2016, a Committee of Unsecured Creditors (the "Committee") was appointed in this case. The Committee is composed of the Debtor's four former Customers 10.

On November 23, 2016, the Debtor filed a Motion to Sell Substantially All of Its Assets and for Approval of Bidding Procedures ("Motion"). The deadline to object to this motion was December 14, 2016.

11. Not one of the counsel for the four Customers in this case ever contacted Counsel for the Debtor about this sale, or the terms of the sale.

12. On December 9, 2016, the Committee requested a thirty (30) day extension of this deadline. The Court granted the Committee and all other creditors a two week extension of this deadline.

13. On December 27, 2016, the Committee, and all of the creditors on the Committee, filed objections to the Motion to Sell. In these objections, the parties submitted that the process for selling the Debtor's assets should take three (3) to six (6) months.

14. On December 30, 2016, the Debtor filed a brief and affidavit wherein it proposed changes to its Motion to Sell in order to address the objections of the Committee and the Customers.

15. On January 3, 2017, a hearing was held on the Motion to Sell. At the hearing, Counsel for the Committee stated the Debtor never contacted Counsel for the Committee about the terms of the proposed sale. Debtor did provide notice of the Motion to Counsel for the Committee and such Counsel never contacted the Debtor's counsel regarding the same.

16. At conclusion of the hearing on January 3rd, the Court denied the Motion to Sell and suggested that the parties work together and try to reach an agreement on sale procedures. Immediately after the hearing, Counsel for the Debtor contacted Counsel for the Committee to discuss sale procedures. Counsel for the Committee suggested, at that time, that the parties get together in Omaha the following week to discuss these issues.

17. The next day, on January 4, 2017, Counsel for the Debtor advised that the Debtor's representative could travel to Omaha on Monday, Tuesday or Wednesday of the following week to attend this proposed meeting with counsel. Counsel for the Committee responded stating, among other things, that the Committee intended to first submit document requests to the Debtor and advised that a conference next week would be too soon.

18. As of this date, neither the Committee nor any of the Customers have suggested procedures or terms for the sale of Debtor's assets. The Debtor, on the other hand, has advised that it is open to marketing and providing notice of the sale to any and all parties suggested by the Committee or its members, including advertising the sale in any publications which the Committee and its members might suggest. The Debtor also invites any of the Customers to serve at the Stalking Horse bidder for any sale of the Debtor's assets, rather than Planet Group, Inc.

19. Although the Customers have consistently exhibited an unwillingness to discuss and attempt to resolve issues with the Debtor in the past, the Debtor is agreeable to working with

the Committee on the issues recommended by the Court and will do so during the pendency of this motion, but maintains that this process must be conducted expeditiously. However, at this point, it appears that neither the Committee nor the Customers intend to proceed expeditiously. The Debtor currently has no income and it is unable to pay its outstanding expenses in Chapter 11 with available funds. Accordingly, the Debtor believes it is in the best interests of the bankruptcy estate to convert this case to a case under Chapter 7 of the Bankruptcy Code.

20. The Debtor reserves the right to withdraw this motion in the event the Debtor and the Committee are able to make sufficient progress regarding the procedure and terms for selling the assets of the Debtor.

WHEREFORE, the Debtor requests the Court to enter an order converting this case to Chapter 7.

Dated: January 5, 2017.

Respectfully submitted:

PLANET MERCHANT PROCESSING, INC., Debtor

By: s/ Sam King

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2017, I caused filing of the foregoing document with the Clerk of the Bankruptcy Court using the CM/ECF system of the United States Bankruptcy Court for the District of Nebraska and in addition mailed, postage prepaid, a copy of such document to those parties named on the current matrix not participating in the CM/ECF system.

s/ Sam King